

Hartzler Ownership and Control Reports Rule Amendment

Brief Summary of the Amendment:

This amendment would delay implementation of the CFTC Ownership and Control Reports (OCR) Rule until the Chairman determines the rule has been amended by adjusting reporting trading volume levels to 300 contracts per day, removing the requirements for natural person controller data, and ensuring the rule does not require entities to violate foreign privacy laws.

Background on Ownership and Control Reports Rule:

The CFTC amended its Ownership and Control Reports (OCR) Rule on November 18, 2013, in response to additional data components created under the Dodd-Frank Act. Implementation has been delayed several times due to the inability of industry participants to comply with the rule as it is currently written and much of the industry is currently operating under no-action relief letters that provide temporary fixes to rules where implementation is not achievable at the current time for a variety of reasons.

The OCR Rule requires that all “reporting parties” – which include futures commission merchants, swap dealers, foreign brokers, and end users (including grain elevators, cooperatives, etc.), to submit ownership and control information to the CFTC. Owners and control information includes contact information such as phone numbers, websites, email addresses, physical address etc. for individuals owning more than 10% of entity and each natural person controller (i.e. people who make trading decisions).

Issues with Current Rule and Proposed Solutions:

Scope of the Rule – The current rule applies to every market participant that trades more than 50 contracts in a specific commodity in any single day throughout the year. This low de minimis captures virtually every market participant including small country grain elevators and cooperatives who run very unsophisticated trading operations to manage price risk on corn, soybeans, rice, cotton and other commodities for their farmer customers. Dodd-Frank never intended to increase reporting burdens on these traditional end users.

Solution – The Hartzler amendment increases that threshold to any market participant that trades more than 300 contracts in a specific commodity in any single day throughout the year. On Monday, January 9, about 300,000 contracts were corn contracts were traded on the Chicago Board of Trade so any market participant on that day that traded 1/10th of one percent of the market would still fall under the OCR rule.

Natural Person Data – The OCR rule requires Futures Commission Merchants (FCMs) to collect from their clients natural person controller data for every single person involved in trading including their full address, phone number, email address, contact name, title, website, and National Futures Association ID, if applicable. FCMs are also required to verify the information submitted to the CFTC by conducting additional due diligence, such as obtaining a driver license/government ID, social security number, or running a background check.

For a small, local county elevator, or even a small coop, all of this information for any individual would need to be gathered for any person who may help in making the trading decisions. Many of these individuals do not have email addresses, website, and only have a home phone, not a work phone. Due to the complex nature of these regulations, the process for adding new customers has been long and burdensome and is reducing the number of FCMs willing to work with smaller volume, lower frequency customers like grain elevators and small cooperatives.

Solution – The Hartzler amendment would remove the natural person controller requirements from final OCR rule while leaving in place all existing ownership and control reporting requirements to ensure the CFTC will be able to track ownership of accounts when needed. The OCR rule would still require information on any individuals or entities with equal to or greater than 10% ownership of the account, including full address, phone number, and email. If the owner is not a natural person (i.e. is an entity entity), the FCM would need to provide a contact name, job title, and contact number.

Foreign Privacy Laws – The OCR rule currently requires a significant amount of personal data and information on individuals and firms that at times violates foreign privacy laws. Currently, if there is a foreign jurisdiction in which the data collection is illegal, the CFTC has offered little acknowledgment of such legal conflicts and rather suggested that the FCM approach a foreign regulator directly and request a letter confirming the information the CFTC is asking for violates their laws. However, the foreign regulator is not required/inclined to supply such documentation leaving the FCM with conflicting legal obligations to protect the privacy of their customers and an unappealing choice between providing insufficient reports or potentially terminating client relationships.

Solution: The Hartzler amendment requires the CFTC to ensure that current regulations do not conflict with foreign privacy laws. Having a large, open, liquid market is important to managing risk, and operating on an international basis is key to the functions of commodity markets. The CFTC should be responsible for

dealing with other government on privacy concerns, and it is inappropriate to push that burden onto the firms and customers that it regulates.